

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 657 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JYOTSNA NATVARLAL RAMAGIYA

Versus

STATE OF GUJ.

Appearance:

1. Criminal Appeal No. 657 of 1988
MR MANOJ N POPAT for Petitioner No. 1
MR ND GOHIL APP for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 13/08/2001

ORAL JUDGEMENT

#. This appeal is filed by appellant Jyotsnaben, wife of Natvarlal wherein she has challenged the judgment and order of conviction and sentence dated 20.4.1988 passed by the learned Special Judge, Jamnagar in Special Case

No.2/84 whereby accused late Natvarlal was convicted for the offence under Section 5(1) r/w.s. 5(2) of the Prevention of Corruption Act and also under Section 161 IPC and sentenced to suffer 1 year R.I. and to pay fine of Rs.500/= in default to further undergo 1 month S.I.

#. On 21.2.1989 Division Bench of this court admitted the appeal and the sentence of fine imposed by the Special Judge was suspended till final decision of that appeal.

#. This is an appeal of 1988. Today it is listed for the 26th time. Last time i.e. on 30.7.2001 when this matter was listed before this court it was kept today at the request of learned counsel Shri Manoj Popat as he wanted to prepare himself on the point of maintainability of this appeal.

#. I am not required to narrate the facts of the case as immediately after order of conviction and sentence passed by the learned Special Judge on 20.4.1988, the appellant-accused died by committing suicide on 22.4.1989. The appellant-accused was a Government servant, therefore, his widow Jyotsnaben has filed this appeal and challenged the above order of sentence.

#. Chapter XXIX of Criminal Procedure Code relates to appeals. U/s.372 of Cr.P.C. no appeal shall lie unless otherwise provided for by this Code or by any other law for the time being in force(emphasis provided)

#. U/s.373 Cr.P.C. any person who has been ordered under Section 117 to execute to give security for keeping the peace or for good behaviour; or who is aggrieved by any order refusing to accept or rejecting a surety under Section 121 may file appeal against such order to the court of Sessions.

#. U/s.374(1) of Cr.P.C. any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

#. U/s.374(2) of Cr.P.C. any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.

#. U/s.374(3) of Cr.P.C. any person convicted on a

trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class, or sentenced under section 325, or, in respect of whom an order has been made or a sentence has been passed under Section 360 by any Magistrate, may appeal to the Court of Session, save as otherwise provided in subsection 374(2) Cr.P.C. may appeal to the court of Sessions.

#. Thus, in the instant case at the instance of accused the appeal against the order of conviction of Sessions Court was maintainable before the High Court under Section 374(2) Cr.P.C.

##. Under Section 375 Cr.P.C. no appeal would be maintainable in certain cases when accused pleads guilty.

##. Under section 376 Cr.P.C. no appeal would lie in petty cases. Section 376 reads as under :-

"376. No appeal in petty cases :
Notwithstanding anything contained in section 374, there shall be no appeal by a convicted person in any of the following cases namely:-

(a) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;

(b) where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;

(c) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or

(d) where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees;

Provided that an appeal may be brought against any such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground-

(i) that the person convicted is ordered to

furnish security to keep the peace; or

(ii) that a direction for imprisonment in default of payment of fine is included in the sentence; or

(iii) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case"....(emphasis supplied)

##. In the instant case, original accused Natvarlal was sentenced to suffer 1 year R.I. for the offences under Sections 5(1) and 5(2) of the Prevention of Corruption Act and Sec. 161 IPC. He was also ordered to pay fine of Rs.500/=. Therefore, it was submitted by Mr.Popat that in the instant case the appeal was maintainable at the instance of the original accused under Section 374(2) of Cr.P.C. He submitted that when there was substantive sentence imposed by the learned Special Judge only and not of fine along with substantive sentence, then the appeal filed by the accused would be abated on his death. However, he submitted that when the learned Special Judge while convicting the accused for the aforesaid offences imposed substantive sentence as well as sentence of fine, then the present appellant, who is the widow of deceased-accused Natvarlal, being legal representative of deceased-accused, was entitled to challenge the order of conviction and sentence passed by the learned Special Judge against her husband before this court by way of appeal.

##. However, learned APP Mr.Mankad submitted that the appellant could have continued the appeal provided it was filed by the accused. He submitted that when the accused himself had not challenged the order of conviction and sentence by way of appeal then, in absence of specific provisions under Cr.P.C. his widow cannot file this appeal. In support of his submission Mr.Mankad has relied upon the case of R v Rowe reported in 1955(2) All England Law Report 234, Lord Goddard, C.J. observed that "it may be that the widow would be very glad to have her husband's name cleared, but we cannot take any notice of the sentimental interest. Nobody is affected now by the judgment of the court because the judgment of the court was a sentence of imprisonment and the prisoner has died."

##. As against that learned counsel Shri Popat for the appellants relied upon the judgment of the Hon'ble

Supreme Court in the case of Pranab Kumar Mitra Vs. State of West Bengal reported in 1959 SC 144 (V 46 C 21) and submitted that if the court in exercise of its revisional jurisdiction can exercise its jurisdiction in a revision pending against order of conviction and sentence, then certainly this court can entertain the appeal at the instance of the present appellant though the order of conviction and sentence was not challenged by original accused-her husband.

##. In my considered opinion the aforesaid judgment of Hon'ble Supreme Court in case of Pranab Kumar Mitra (Supra) will have no application to the facts of the present case. In fact, the aforesaid judgment of Pranab Kumar Mitra (supra) was subsequently considered by the Hon'ble Supreme Court in case of State of Kerala Vs. Narayani Amma Kamala Devi reported in 1062 SC 1530 wherein Hon'ble Supreme Court has clearly observed that "the Cr.P.C. gives a right of appeal to the convicted persons in certain cases. If, after the conviction and before an appeal has been filed the convicted person he dies, there is no provision for any appeal on his behalf. What will happen when after an appeal has been filed by the convicted person he dies, is provided for in S.431 of Indian (old) Cr.P.C. That section provides that every appeal against acquittal and every other appeal under Chapter XXXI except an appeal from a sentence of fine shall finally abate on the death of the appellant"(emphasis supplied).

After making aforesaid observation, the Hon'ble Supreme Court further held that "The High Court or the Court of Sessions cannot therefore exercise its appellate jurisdiction in favour of a dead person even if an appeal has been filed by him, except in an appeal from a sentence of fine"(emphasis supplied)

##. Similar view was taken by the Hon'ble Supreme Court in case of Bondada Gajapati Rao Vs. State of Andhra Pradesh reported in AIR 1964 SC 1645, wherein the Hon'ble Supreme Court held that "the fact that the accused was a government servant and was under suspension during the trial and the fact that if the conviction and sentence were set aside, his estate would be entitled to receive full pay for the period of suspension, cannot be said to affect his estate, because, the setting aside of the sentence would not automatically entitle the legal representatives to the salary".

##. This is a clear answer to the submission made by Mr.Popat, learned counsel for the appellant. Even if

this appeal was entertained and allowed and the order of conviction and sentence passed by the Special Judge was set aside, then she would not be automatically entitled for the salary of the suspension period and family pension.

##. However, Mr. Popat submitted that in both the aforesaid cases the Hon'ble Supreme Court observed that the legal heirs of the deceased-accused can always continue the appeal when the appeal is filed against the sentence of fine. He submitted that in the instant case also there is a sentence of fine along with substantive sentence of 1 year R.I., he, therefore, submitted that appeal at the instance of the present appellant, who is the widow and legal heir of the deceased-accused would be maintainable. It is true that in the instant case Special Judge imposed the fine of Rs.500/= along with substantive sentence of 1 year R.I., but in my considered opinion merely because there was a sentence of fine of Rs.500/= that would not entitle the present appellant to file the appeal and challenge the order of conviction passed by the learned Special Judge because main sentence is of 1 year R.I. While passing the order of substantive sentence of 1 year R.I. the Special Judge has also imposed fine of Rs.500/=. Thus, in my considered opinion when there is substantive sentence of 1 year R.I. imposed by the court while convicting the accused, then the same was first required to be challenged by the accused. If, for any reason the accused is not able to challenge the same in appeal, during his existence, then after his death his legal heirs cannot challenge the said order of conviction and sentence by way of appeal under section 374(2) Cr.P.C. before the High Court. In the instant case, the original accused was convicted for aforesaid offences and substantive sentence of 1 year R.I. was imposed and he was also ordered to pay fine of Rs.500/=. Merely because the Special Judge has imposed fine of Rs.500/= also while passing substantive sentence of 1 year R.I. that would not entitle the present appellant to challenge the said order of conviction and sentence by way of this appeal before this court.

At the cost of repetition, I may state that Legislature in its wisdom has made provision in Cr.P.C. under which legal representatives of the deceased-accused can continue the appeal already filed by the accused after his death by seeking leave from the court to continue the appeal. However, there is no provision in Cr.P.C. under which legal heirs of the deceased accused on his death can challenge the order of conviction and sentence passed against him even though the same was not

challenged by the deceased-accused. Thus, I am of the considered opinion that this court has no option but to dismiss the present appeal filed by the widow of accused-Natvarlal (deceased) as not maintainable.

##. At this stage, a request is made by learned counsel Shri Popat for the appellant-accused to permit him to convert this appeal into revision. Such a request cannot be granted in view of the specific provision made in Section 401(4) Cr.P.C., therefore, it is rejected.

In view of the above discussion, without going into the validity and legality of the order of conviction and sentence recorded by the Special Judge convicting the accused deceased Natvarlal for the said offence, the present appeal filed at the instance of Jyotsnaben, widow of deceased accused Natvarlal dismissed as not maintainable. Accordingly it is dismissed.

(B.J.Shethna, J.)

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